

FILED '09 JUL 08 13:44 USDC-ORE

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

NANCY FIELDS,

Plaintiff,

Civil No. 08-6041-TC

v.

FINDINGS &  
RECOMMENDATION

TOMLIN NICKS WELLS & TOWNSEND  
ADVERTISING, INC.,

Defendant.

COFFIN, Magistrate Judge:

Presently before the court in this trademark infringement action is plaintiff's motion for order of default judgment. As discussed in more detail below, defendant has failed to defend this action and default judgment should be entered.

This court has previously granted plaintiff's motion to compel discovery and ordered the corporate defendant to comply with plaintiff's discovery requests. Defendant failed to do so and plaintiff brought a motion (#28) for sanctions that this court granted pursuant to Fed. R. Civ P. 37 (b)(2). Sanctions included the striking of defendant's answer. Order (#32). Plaintiff also sought to sanction Charlie Nicks, but such request was denied as Nicks is not a party to this action. Nicks is only a former officer and director of defendant as he resigned such positions with the corporate

defendant. Defendant is not currently represented by counsel and Nicks cannot represent defendant as an attorney. See C.E. Pope Equity Trust v. United States, 818 F.2d 696, 697 (9th Cir. 1987)

Plaintiff has provided defendant with notice(#33) of the application for default judgment. Plaintiff well pleaded complaint sufficiently alleges that defendant intentionally infringed upon plaintiff's trademark. Plaintiff has adequately demonstrated that defendant is in default for failure to defend and that plaintiff is entitled to a default judgment.

Conclusion

Plaintiff's motion (#35) for order of default judgment against defendant should be allowed. A default and default judgment against defendant should be entered in this action with the amount of such judgment to be determined at a subsequent hearing.

DATED this 8<sup>th</sup> day of July, 2009.

  
\_\_\_\_\_  
THOMAS M. COFFIN  
United States Magistrate Judge